Item 1008-D

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 96–
2d Session } { 1243, Part 2

PROVIDING FOR THE CONSERVATION AND ENHANCEMENT OF THE SALMON AND STEELHEAD RESOURCES OF WASHINGTON STATE, ASSISTANCE TO THE TREATY AND NONTREATY HARVESTERS OF THOSE RESOURCES, AND FOR OTHER PURPOSES

SEPTEMBER 19, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

COMPLETED ORIGINAL

REPORT

[To accompany H.R. 6959]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 6959) to provide for the conservation and enhancement of the Salmon and steelhead resources of Washington State, assistance to the treaty and nontreaty harvesters of those resources, and for other purposes having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

SECTION 1. FINDINGS, PURPOSES, AND POLICY.

(a) FINDINGS.—The Congress finds and declares the following:

(1) The stocks of salmon and steelhead which originate in the rivers of the conservation areas constitute valuable and renewable natural resources. Many groups of commercial, recreational, and treaty fishermen have historically depended upon these stocks of fish for their livelihoods and avocations. These fishery resources contribute to the food supply and economic health of the Pacific Northwest and Nation as a whole, provide valuable recreational experiences for thousands of citizens from various parts of the United States, and represent a central element of the cultures and economies of Indian tribes and the citizens of the Pacific Northwest.

(2) Over a period of several decades, competing uses of salmon and steelhead habitat and historical problems relating to conservation measures, the regulation of harvest, habitat management, and enhancement have depressed several of these stocks of salmon and steelhead.

(3) Improved management and enhancement planning and coordination among salmon and steelhead managers will help prevent further decline of salmon and steelhead stocks and will assist in increasing the supply of these stocks.

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(24)

(4) The fishing capacity of nontreaty fishermen in the conservation areas established by this Act exceeds that required to harvest the available salmon resources. This excess capacity causes severe economic problems for these fishermen.

(5) The ability of the Klamath River and Treaty Tribes to enhance the salmon and steelhead resources passing their usual and accustomed fishing grounds is hindered by the lack of sufficient financial resources.

(6) The supply of salmon and steelhead can be increased through carefully planned enhancement measures designed to improve the survival of stocks and augment the production of artificially propagated stocks. By careful choice of species, areas, and stocking procedures, enhancement programs can be used to—

(A) restore stocks through remedial actions to compensate for declines in resource production resulting from overfishing and environmental degradation;

(B) improve the distribution of fish among different groups of fishermen; and

(C) add stability to the fishery by reducing variations in fish availability.

(7) The decisions in the cases of the *United States* v. *Washington* and *Sohappy* v. *Smith* have resulted in temporary economic dislocation in the salmon fishery.

(b) PURPOSES AND POLICY.—It is therefore declared to be the purposes and policy of the Congress in this Act that—

(1) the various salmon and steelhead managers should coordinate their activities to ensure the effective conservation of the salmon and steelhead in the conservation areas;

(2) it is in the national interest to increase the supply of, and provide for the long-term conservation and optimum production of, the salmon and steelhead resources of the conservation areas and to minimize significant adverse interaction between naturally spawning and artificially propagated stocks;

(3) Federal financial assistance should be provided for the enhancement of salmon and steelhead resources within the conservation areas;

(4) the economic well-being of treaty and nontreaty commercial fishermen be improved and the recreation fishing opportunity for salmon and steelhead be enhanced; and

(5) all commercial and recreation fishermen and the Klamath River and Treaty tribes within the conservation areas shall have a reasonable opportunity to participate in the benefits, considered as a whole, of the enhancement program, consistent with other applicable law.

SEC. 2. As used in this Act—

(1) The term "Columbia River Tribe" means any of the following:

(A) The Confederated Tribes and Bands of the Yakima Indian Nation of Washington.

(B) The Confederated Tribes of the Warm Springs Indian Reservation of Oregon.

(C) The Confederated Tribes of the Umatilla Indian Reservation of Oregon.

(D) The Nez Perce Tribe of Idaho.

(E) Any other Indian tribe whose fishing rights in the Columbia River drainage basin—

(i) derive from a treaty between it and the United States, and

(ii) have been recognized by a Federal court.

(2) The term "Columbia River management party" refers to the following:

(A) The State of Washington.

(B) The State of Oregon.

(C) A coordinating body duly authorized by the Columbia River Tribes.

(D) The Pacific Fishery Management Council established under section 302 of the Fishery Conservation and Management Act of 1976.

(3) The term "Columbia River conservation area" means—

(A) all habitat within the Columbia River drainage basin, and

(B) those areas in—

(i) the fishery conservation zone over which the Pacific Fishery Management Council has jurisdiction, and

(ii) the territorial sea of Oregon or Washington.

in which one or more stocks that originate in the habitat described in subparagraph (A) migrate.

(4) The term "conservation and management" refers to all of the rules, regulations, methods, and other measures which are—

(A) required to rebuild, restore, or maintain, or which are useful in rebuilding, restoring, or maintaining, any fishery and the related habitat; and

(B) designed to assure that—

(i) a supply of food and other products may be taken and that recreational benefits may be obtained, on a continuing basis,

(ii) irreversible or long-term adverse effects on the fishery and the related habitat are avoided, and

(iii) there will be a multiplicity of options available with respect to future uses of the fishery and the related habitat.

(5) The term "enhancement project" means one or more specific activities undertaken to increase the survival or production of one or more stocks.

(6) The term "fishery" means one or more stocks which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

(7) The term "habitat" means those portions of land or waters, including the constituent elements thereof—

(A) which one or more stocks occupy at any time during their life cycle, or

(B) which affect one or more stocks.

(8) The term "Klamath River conservation area" means—

(A) all habitat within the Klamath River drainage basin, and

(B) those areas in—

(i) the fishery conservation zone over which the Pacific Fishery Management Council has jurisdiction, and

(ii) the territorial sea of California.

in which one or more stocks that originate in the habitat described in subparagraph (A) migrate.

(9) The term Klamath River "management party" refers to the following:

(A) The State of California.

(B) The counties of Del Norte, Humboldt, Trinity, and Siskiyou, California.

(C) The Klamath River Tribes.

(D) The Pacific Fishery Management Council.

(10) The term "Klamath River Tribes" means the Hoopa Valley Tribe of the Hoopa Valley Reservation; the Karok Tribe; and the Yurok Tribe of the Hoopa Valley Reservation, all in the State of California.

(11) The term "optimum", with respect to the yield from a fishery, means an amount of the salmon or steelhead therefrom which—

(A) is consistent with applicable law;

(B) will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(C) is prescribed as such on the basis of the maximum sustainable yield from such fishery, and the escapement goals for the various stocks as modified by any relevant economic, social or ecological factors.

(12) The term "salmon" means any anadromous species of the family Salmonidae and Genus Oncorhynchus, commonly known as Pacific salmon.

(13) The term "Secretary" means the Secretary of Commerce.

(14) The term "steelhead" means the anadromous rainbow trout species Salmo gairdneri, commonly known as steelhead.

(15) The term "stock" means any species, subspecies, race, geographical grouping, population, run, or other category of salmon or steelhead that is capable of being managed as a unit.

(16) The term "Treaty Tribe" means any Columbia River Tribe or Washington Tribe.

(17) The term "Washington conservation area" means—

(A) all habitat within the State of Washington other than the Columbia River drainage basin, and

(B) those areas in the fishery conservation zone referred to in paragraph (3)(B) over which the Pacific Fishery Management Council has jurisdiction and in which one or more stocks that originate in the habitat described in subparagraph (A) migrate.

(18) The term "Washington management party" refers to—

(A) The State of Washington.

(B) A coordinating body duly authorized by the Washington Tribes.

(C) The Pacific Fishery Management Council.

(19) The term "Washington Tribe" means any Indian tribe recognized by the United States Government, with usual and accustomed fishing grounds within the State of Washington (other than the Columbia River drainage basin), whose fishing rights therein derive from a treaty between it and the United States and have been recognized by a Federal court.

TITLE I—MANAGEMENT AND ENHANCEMENT OF SALMON AND STEELHEAD

CHAPTER 1—COMMITTEES AND PLANS

JOINT SALMON AND STEELHEAD MANAGEMENT COMMITTEES

SEC. 101. (a) ESTABLISHMENT.—If before the one-hundred and eightieth day after the date of enactment of this Act—

(1) each Columbia River management party notifies the Secretary in writting that it wishes to be a member of the Joint Columbia River Salmon and Steelhead Management Committee (hereinafter in this Act referred to as the "Columbia River Committee"), there is established, effective on and after the day on which the last of such notifications is received, such Committee;

(2) each Washington management party notifies the Secretary in writing that it wishes to be a member of the Joint Washington Salmon and Steelhead Management Committee (hereinafter in this Act referred to as the "Washington Committee"), there is established on and after the day on which the last of such notifications is received, such Committee; and

(3) each Klamath River management party notifies the Secretary in writing that it wishes to be a member of the Joint Klamath River Fisheries Conservation Committee (hereinafter referred to as the "Klamath River Committee"), there is established, effective on and after the day on which the last of such notifications is received, such Committee.

(b) MEMBERSHIP AND PROCEDURE.—(1) The Columbia River Committee shall consist of four members. The Washington Committee shall consist of three members. The Klamath River Committee shall consist of nine members. Each constituent management party of each such Committee shall be responsible for the selection and appointment of one member, and the appropriate officer of such party shall certify the appointment to the Secretary: *Provided*, That the Secretary of the Interior, after consultation with appropriate organizations and groups of Yurok Indians, shall appoint a member to the Klamath River Committee to represent the Yurok Tribe until such time as the Yurok Tribe organizes a tribal government and appoints its own member: *Provided further*, That the member appointed by the Secretary of the Interior to represent the Yurok Tribe shall have full authority to act for the Yurok Tribe as provided in this Act.

(2) Each such Committee shall have a Chairman, the term of office of which is one year. The members of each Committee shall fill the office of Chairman on a rotating basis. The sequence of rotation shall be determined by the Committee by lot.

(3) Each such Committee shall meet at the call of the Chairman or, in the case of the Columbia River Committee, upon the demand of at least three voting members and, in the case of the Washington Committee, upon the demand of at least two voting members and, in the case of the Klamath River Committee, upon the demand of five voting members.

(c) FUNCTIONS.—The functions of the Columbia River, Klamath River, and Washington Committees are to prepare, review, and, if necessary amend, in accordance with section 102, a management plan, and an enhancement plan, for their respective conservation areas.

(d) PER DIEM AND TRAVEL ALLOWANCES.—The members of each Committee (other than those who are full-time employees of the Federal or a State government), while away from their homes or regular places of business for purposes of carrying out their duties as members, shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons intermittently employed in Government service.

(e) ADMINISTRATIVE SUPPORT.—The Secretary shall provide such clerical and technical support as may be necessary to enable each Committee to carry out its functions.

(f) SPECIAL PROVISIONS.—Any Klamath River or Treaty Tribe electing to not be represented on its respective management committee shall not be bound by any management plan or enhancement plan developed by said committee and will not be eligible to receive enhancement assistance provided in this Act.

MANAGEMENT PLANS AND ENHANCEMENT PLANS

SEC. 102 (a) MANAGEMENT PLANS STANDARDS.—Each Committee referred to in section 101(a), in preparing a management plan, and amendments thereto, for its respective conservation area shall apply conservation and management measures that shall—

(1) prevent overfishing and provide for—

(A) optimum production, and

(B) on a continuing basis, an optimum yield from the fishery;

(2) be based upon the best scientific information available;

(3) to the extent practicable, provide for the management of each individual stock as a unit throughout its range, and interrelated stocks may be managed as a unit or in close coordination;

(4) not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be—

(A) fair and equitable to all such fishermen;

(B) reasonably calculated to promote conservation; and

(C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) where practicable, promote efficiency in the utilization of the fishery and the related habitat, except that such measures may not have economic allocation as their sole purpose;

(6) take into account and allow for variations among, and contingencies, in, fisheries and catches;

(7) where practicable, minimize costs and avoid unnecessary duplication; and,

(8) notwithstanding any of the above measures, provide for the harvest of shares in accordance with treaty or other Federally-protected Indian rights unless agreed otherwise by all affected parties.

(b) ENHANCEMENT PLAN STANDARDS.—Each such Committee, in preparing an enhancement plan, and amendments thereto, for its respective conservation area, shall set forth enhancement projects that shall—

(1) assure that all commercial and recreational fishermen and the Klamath River and Treaty Tribes within the conservation area shall have a reasonable opportunity to participate in the benefits, considered as a whole, of such projects;

(2) provide for the long-term conservation and optimum production of the salmon and steelhead resources of the conservation area and minimize to the extent practicable significant adverse interaction between naturally spawning and artificially propagated stocks;

(3) be designed to complement the contribution of existing sound State, Federal, and tribal enhancement activities; and

(4) be economically and biologically sound, and supported by adequate scientific research, and achieve significant benefits relative to their overall cost.

(c) PLAN CONTENTS.—(1) Each management plan, with respect to a fishery, shall contain the conservation and management measures necessary or appropriate for the conservation and management of the fishery that are consistent with the standards set forth in subsection (a) and any other applicable law, including, but not limited to—

(i) a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the cost

likely to be incurred in its management, any recreational interests in the fishery, and the nature and extent of foreign fishing and the fishing rights of the Klamath River and Treaty Tribes therein, and

(ii) an assessment and specification of the present and probable future condition of, and the maximum sustainable yield, the optimum yield, and the optimum production from, the fishery, which specification shall include a summary of the information utilized in making it; and

(2) Each enhancement plan shall set forth such enhancement projects to be carried out within the conservation area as are necessary or appropriate.

(d) DISCRETIONARY MEASURES.—(1) The conservation and management measures included within a management plan for a fishery may include—

(i) the designation of zones where, and periods when, fishing in the fishery shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(ii) the establishment of specified limitations on the catch of salmon or steelhead (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factor) which are necessary or appropriate for the conservation and management of the fishery; and

(iii) porhibitions, limitations, conditions, or requirements on the use of specified types and quantities of fishing gear, fishing vessels, including such devices which may be required to facilitate enforcement of the plan.

(2) All such discretionary measures shall be consistent with legal requirements relating to the regulation of treaty or other Federally protected Indian fisheries.

(e) REVIEW AND AMENDMENT OF PLAN.—If a management plan or an enhancement plan enters into force and effect as provided for under section 103, the Columbia River, Klamath River, or Washington Committee, as the case may be, shall on a continuing basis review the sufficiency and effect of the plan in the light of actual implementation, enforcement, conservation and management and enhancement experience and determine if any amendment of the plan is necessary. Such Committee shall submit amendments deemed necessary by it to the Secretary for approval under section 104.

TAKING EFFECT OF PLANS

SEC. 103. (a) ENHANCEMENT PLANS.—An enhancement plan provided for under section 102 shall enter into force and effect with respect to the respective management parties of the Committee concerned, and chapter 2 shall take effect for purposes of assisting in the implementation of such plan, only if—

(1) the enhancement plan is unanimously agreed to by Committee; and

(2) such plan is approved pursuant to section 104.

(b) MANAGEMENT PLANS.—A management plan provided for under section 102 shall enter into force and effect with respect to the respective management parties of the Committee concerned, and chapter 2 of this title shall take effect for purposes of assisting in the implementation of such plan, only if—

(1) the management plan is unanimously agreed to by the Committee;

(2) such plan is approved pursuant to section 104; and

(3) a formal agreement, to which each management party is signatory, is entered into under which each such party mutually obligates itself throughout the ten-year period beginning on the date of such approval—

(A) to implement and enforce the provisions of the plan and amendments thereto, through laws, regulations, ordinances or other appropriate means, within such geographical areas and with respect to such persons as may be subject to its jurisdiction and to the extent of its enforcement power,

(B) to enage in such coordination and consultation, through the Committee or otherwise, as may be necessary or appropriate to ensure, to the maximum extent practicable, that the plan is fully and efficiently implemented and to carry out the requirements relating to plan review and amendment set forth in section 102(e), and

(C) not to withdraw from participation in the plan unless all other management parties unanimously agree to so withdraw.

The formal agreement referred to in paragraph (3) may provide, and establish appropriate procedures, for the arbitration of disputes among the parties thereto relating to the carrying out of their obligations under the agreement.

(c) AMENDMENTS TO PLAN.—No amendment to the plan shall have force and effect unless the amendment—

(1) is unanimously agreed upon by the respective management parties; and

(2) is approved under section 104.

APPROVAL OF PLANS AND AMENDMENTS

SEC. 104(a) IN GENERAL.—Any management plan, enhancement plan, or amendments to either prepared by the Columbia River, Klamath River, or Washington Committee shall be treated as having been approved by the Secretary unless, within the one hundred and twenty day period after the day on which the plan or amendments are submitted to the Secretary by such Committee, the Secretary finds, and publishes notification in the Federal Register, before the close of such period that the plan or amendment is not consistent with the appropriate standards and requirements set forth in section 102. The Secretary shall include in such notification the reasons for such finding. If the Secretary considers that the plan or amendments are consistent with such standards and requirements, he may publish notification to that affect in the Federal Register.

(b) COMMITTEE ACTION UPON DISAPPROVAL.—If the Secretary disapproves the plan or amendments thereto, the Committee concerned may undertake either or both of the following actions:

(1) Prepare a plan or amendments after taking into account the reasons for disapproval.

(2) Seek appropriate judicial review of the Secretary's disapproval.

(c) DATE OF APPROVAL.—For purposes of this chapter, the date of approval of a management plan, enhancement plan, or amendments is, as the case may be—

(1) the expiration of the one hundred and twenty day period referred to in subsection (a); or

(2) the date on which notification of approval is published in the Federal Register.

EFFECT OF PLAN ON CERTAIN REQUIREMENTS UNDER THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

SEC. 105. Nothing in this Act shall be construed as affecting the provisions of title III of the Fishery Conservation and Management Act of 1976 as it applies with respect to fishery management plans and their application to any fishery; except that—

(1) the Pacific Fishery Management Council shall prepare such amendments to the fishery management plan as may be necessary or appropriate to make that plan consistent with any management plans and their application effect under this title;

(2) for purposes of such preparation, and Secretarial review pursuant to such title III, the management plan standards and requirements set forth in section 102 shall apply rather than those in such title;

(3) the Secretary may not partially disapprove any amendment prepared by the Council to carry out paragraph (1); and

(4) the Secretary may not prepare, under section 304(c) of such Act of 1976, any amendment required to be made by the Council by paragraph (1).

CHAPTER 2—FINANCIAL ASSISTANCE FOR ENHANCEMENT

AUTHORITY TO MAKE GRANTS

SEC. 121. Upon approval of an enhancement plan of the Columbia River, Klamath River, or Washington Committee, the Secretary shall make grants to management parties and Klamath River and Treaty Tribes concerned to assist them to carry out, in whole or part, the enhancement projects specified in the plan. In deciding whether to make grants under this chapter, the Secretary shall take into consideration whether similar projects are being carried out under Federal, State, or private auspices.

TERMS AND CONDITIONS

SEC. 122. Each grant made under this chapter shall contain such terms and conditions as the Secretary shall by regulation prescribe as being necessary or appropriate to implement the limitations in section 123 and 124 and to otherwise protect the interests of the United States.

GRANT LIMITATIONS

SEC. 123. (a) IN GENERAL.—The amount of any grant made under this chapter may not exceed one-half of the estimated cost of the enhancement project for which it is made; except that—

(1) grants for up to 100 per centum of the cost of the projects may be made to Klamath River and Treaty Tribes; and

(2) the State of Washington shall be treated on the date this chapter enters into effect with respect to it as having expended $32,000,000 (reduced by the State under section 207 of this Act) on enhancement projects set forth in the plan which are eligible for assistance under this chapter.

(b) SPECIAL PROVISIONS.—(1) No Klamath River or Treaty Tribe is eligible for assistance under this chapter after a management plan affecting such tribe is approved under section 104 unless it enters into a written commitment, satisfactory to the Secretary, to participate, in good faith, in the implementation and enforcement of the management plant to the extent of is ability and jurisdiction.

(2) No management party or Klamath River or Treaty Tribe is eligible for assistance under this chapter unless it agrees not to undertake any enhancement project not specified in the enhancement plan if that project is inconsistent with such plan or with the management plan, if any, applicable to it.

(c) IN-KIND CONTRIBUTIONS.—In computing the estimated cost of any enhancement project, the Secretary shall take into account, in addition to cash outlays to be made by the grant recipient, the value of such in-kind contribution (including, but not limited to, personnal services) and real and personal property applied by the recipient in carrying out the project. The Secretary shall establish by regulation the standards under which the value of in-kind contributions and real and personal property will be determined for purposes of this subsection. Any valuation determination made by the Secretary for purposes of this subsection shall be conclusive.

TERMINATION OR SUSPENSION OF ASSISTANCE UNDER CHAPTER

SEC. 124 (a) TERMINATION FOR REASON OF WITHDRAWAL FROM AGREEMENT.—If—

(1) a management plan for the Columbia River, Klamath River, or Washington Committee is not approved under section 104 within eighteen months after the date on which an enhancement plan is approved under such section for that Committee;

(2) the Secretary finds that the management parties have unanimously agreed to withdraw from participation in the plan before the termination of the ten-year period referred to in section 103(b)(3); or

(3) the Secretary finds that one or more management parties have not carried out their obligations under the agreement referred to in section 103 (b)(3), or that one or more Klamath River or Treaty Tribes have not carried out their commitments referred to in section 123(b)(1) with the result that the management plan concerned can no longer be implemented appropriately:

then effective on and after thate date of such notification, the Secretary may not—

(A) receive applications for grants under this chapter;

(B) further process applications received, but not finally acted on, before such date; or

(C) disburse any moneys under this chapter.

(b) OTHER TERMINATION AND SUSPENSION.—(1) If the Secretary finds that—

(A) any management party or Klamath River or Treaty Tribe has failed to, or is not satisfactorily carrying out, the terms of conditions of a grant made under this chapter;

(B) any Klamath River or Treaty Tribe is not fulfilling its commitment entered into under section 123(b)(1); or

(C) any management party or Klamath River or Treaty Tribe is not fulfilling its commitment entered into under section 123(b)(2);

the Secretary may, as the circumstances require, refuse to award a grant or suspend or terminate the disbursement of moneys under the grant.

(2) No action may be taken by the Secretary under paragraph (1), or under subsection (a)(3), unless the Secretary gives the party or tribe concerned notice of the proposed action and the reasons therefor, and a reasonable opportunity to take corrective action.

AUDIT

SEC. 125. Each recipient of a grant under this chapter shall make available to the Secretary and to the Comptroller General of the United States for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under the grant.

AUTHORIZATION OF APPROPRIATIONS

SEC. 126. (a) For purposes of carrying out this chapter (including, but not limited to, the operation and maintenance of enhancement facilities) there are authorized to be appropriated not to exceed $45,000,000 for the ten-year period beginning on October 1, 1981, for the Washington conservation area; not to exceed $25,000,000 for the ten-year period beginning on such date for the Columbia River conservation area; and not to exceed $15,000,000 for the ten-year period beginning on such date for the Klamath River conservation area.

(b) In addition to the amounts authorized under subsection (a) there are authorized to be appropriated to carry out steelhead enhancement projects (including, but not limited to operation and maintenance of enhancement facilities) not to exceed $7,000,000 for the ten-year period beginning October 1, 1981, for the Washington conservation area; and not to exceed $7,000,000 for the ten-year period beginning on such date for the Columbia River conservation area.

TITLE II—COMMERCIAL FISHING FLEET ADJUSTMENT

SEC. 201. FLEET ADJUSTMENT PROGRAM

(a) IN GENERAL.—The Secretary, upon approval of a program submitted pursuant to section 203 of this title, is authorized to distribute Federal funds to the State of Washington (hereinafter in this file referred to as the "State"), subject to the standards, conditions, and restrictions set forth in this title, for the purchase of commercial fishing and charter vessels (including the associated fishing gear) and licenses by the State in accordance with the provisions of this title. The Federal share payable under this title shall not exceed 75 per centum in any fiscal year of the total costs of the program in that fiscal year.

(b) LEGAL TITLE.—Title to any vessel or other personal property purchased under a State program approved by the Secretary in accordance with the provisions of this title shall vest upon purchase in the State. If the State sells such vessels or other property, title may pass in accordance with such sale.

SEC. 202. STANDARDS

The State shall submit to the Secretary a program within three months of the date of enactment of this Act designed to—

(1) provide incentives for early retirement of licenses, or early sale of vessels;

(2) set aside specific allocations of funds for each gear type to achieve the specific fleet reductions provided for in the program;

(3) obtain an effective and expenditious reduction in the overall fishing capacity of and the number of vessels and licenses in the non-Indian commercial and charter salmon fishing fleets in the Washington conservation area; and

(4) provide State funding for 25 per centum of the total cost of the program.

SEC. 203. PROGRAM APPROVAL

(a) SUBMISSION FOR APPROVAL.—The State shall submit its program and submit revisions, modifications, or amendments to the Secretary in accordance with standards established pursuant to section 202 and in such manner and form as the Secretary shall prescribe.

(b) REQUIREMENTS FOR APPROVAL.—Prior to approving such program or any revision, modification, or amendment, and authorizing Federal funds to be distributed in accordance with this title, the Secretary must find that—

(1) the State, acting through its chosen agency or agencies, has authority to carry out a commercial and charter vessel fleet reduction program in accordance with the provisions of this title;

(2) the State program provides that a fishing or charter vessel may not be purchased by the State from other than the person who owned the vessel on the date of the enactment of this act;

(3) the State program prevents the expenditure of disproportionate amount of funds available for vessel acquisition on vessels owned by any one person;

(4) the State program prohibits the purchase of any fishing or charter vessel unless all State commercial and charter salmon fishing licenses attached to the vessel are also sold to the State;

(5) the State program provides that no person may purchase from the State any vessel which that person or a member of that person's immediate family had previously sold to the State;

(6) the State program provides that no person may purchase any vessel sold to the State pursuant to the program and use such vessel for commercial or charter salmon fishing in the Washington conservation area, unless State law provides that the use of such vessel could not result in any additional fishing effort in the non-Indian fishing fleet;

(7) the State program provides for purchase of vessel at their fair market value;

(8) the State program provides for the reduction of salmon fishing licenses, through purchase of such licenses at their fair market value, and the use of bonuses and schedules, to—

(A) secure an early retirement from the salmon fishery;

(B) recognize productiveness if the commercial harvesters using a gear type wish that gear type's specific allocation of funds to recognize productiveness; and

(C) recognize passenger-carrying capacity for charter fishing licenses;

(9) the State program provides, with respect to marginally productive commercial salmon fishermen, for the purchase of their salmon fishing licenses, but not their fishing vessels;

(10) the State will not, during the five-year period beginning on the date of enactment of this Act, issue any new commercial or charter salmon fishing license;

(11) the State has established a revolving fund for the operation of the fleet reduction program that includes an individual account for each category of fishing license (based on type of fishing gear used) and that any moneys received by the State or its agents from the resale of any fishing vessel or gear purchased under the program (A) shall be placed in such revolving fund, (B) shall, for at least three years from the date of the program's inception, be placed in the appropriate individual account, and (C) shall be used exclusively to purchase commercial fishing and charter vessels and licenses in accordance with the provisions of this title; and

(12) the State will notify the Secretary of the termination date of the State program and will pay to the United States Treasury an amount equal to 75 per centum of the balance, on such termination date, of the revolving fund referred to in paragraph (11).

(c) SECRETARIAL ACTION.—The Secretary shall approve such program within ninety days of the date of receipt of the program if found to be consistent with this Act and other applicable law. If the Secretary finds that such program is not in conformity with the provisions of this Act or other applicable law, he shall return such program to the State with recommendations. Any revision, modification, or amendment to the program shall be approved within thirty days of receipt unless found to be inconsistent with this Act or other applicable law.

SEC. 204. REVIEW BY SECRETARY

(a) IN GENERAL.—The Secretary shall conduct a continuing review of the State program to determine whether the program remains consistent with this Act or other applicable law. Such review shall include a biennial audit of the records of the State program.

(b) ACTION UPON FINDING OF NONCOMPLIANCE.—If the Secretary finds that the program or the administration thereof is no longer in compliance with this title, he shall reduce or discontinue distribution of funds under this title, or take other appropriate action.

(c) DISPOSITION OF CERTAIN MONEYS.—If the Secretary finds that any money provided to the State or obtained by the State from the resale of any fishing or charter vessel purchased under the program is not being used in accordance with the provisions of this title, the Secretary shall recover from the fund, and place in the United States Treasury, such moneys.

SEC. 205. FLEET MOBILITY

The Secretary in coordination with the Pacific Fishery Management Council in its salmon management plan shall ensure that the fishing effort reduction that results from the fleet adjustment program of this title and the license moratorium of the State is not replaced by new fishing effort from outside the State.

SEC. 206. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Secretary, for the purposes of carrying out the provisions of this title, $37,500,000 for the five-year period beginning October 1, 1981.

SEC. 207. SPECIAL PROVISION

On the date the Secretary approves the program under section 203, the State shall be treated as having expended such portion of $32,000,000 as the State deems appropriate for purposes of implementing the program.

TITLE III—MISCELLANEOUS

REGULATIONS

SEC. 301. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out this Act.

REPORTS

SEC. 302. The States of Washington, Oregon, and California and the tribal coordinating bodies referred in section (2)(2)(C) and (18)(B) shall submit to the Secretary an annual report on the status of the program authorized by this Act or any other relevant report requested by such Secretary.

RELATION TO OTHER LAWS

SEC. 303. Nothing in this Act shall be construed—

(1) to diminish Federal, State, or tribal jurisdiction, responsibility, or rights in the field of resource enhancement and management, or control of water resources, submerged lands, or navigable waters; nor to limit the authority of Congress to authorize and fund projects; or

(2) as superseding, modifying, or repealing any existing applicable law, except as provided for in section 105 of this Act.

Amended the title so as to read:

A bill to provide for the conservation and enhancement of the salmon and steelhead resources of the Pacific Northwest and California, assistance to treaty and nontreaty harvesters of those resources, and for other purposes.

PURPOSE

The purpose of H.R. 6959, as reported by the Committee, is to provide for the enhancement and conservation of the salmon and steelhead resources of the State of Washington and Oregon; and the Klamath River Basin in the State of California. In accomplishing this purpose, the legislation would provide for the dvelopment and implementation of salmon and steelhead management and enhancements plans and provide for a program to reduce fishing pressure in the State of Washington.

LEGISLATIVE BACKGROUND

Except as noted hereunder, the Committee adopts the legislative background set out in the report of the Committee on Merchant Marine and Fisheries on H.R. 6959 (H. Rept. 96-1243, Part I).

Shortly after H.R. 6959 was introduced on March 27, 1980, the Committe became aware of its provisions and the potential impact they

could have on the treaty fishing rights of Indian tribes in the Pacific Northwest. On April 21, 1980, the Chairman of the Committee on Interior and Insular Affairs wrote to the Speaker of the House of Representatives, setting out the jurisdiction of the Committee over certain matter in the bill and requesting a sequential referral, if and when the Merchant Marine Committee filed a report. The Chairman renewed his request to the Speaker in a letter of May 8, 1980, in greater detail.

The Merchant Marine Committee filed its report on August 21, 1980, and, on the same date, the bill was sequentially referred to the Interior Committee for a period ending not later than September 10, 1980, for consideration of such provisions of the bill and amendments as fell within its jurisdiction under clause 1(k), rule X. The reporting date was later extended to September 19, 1980.

The Committee was generally satisfied with the treatment of Indian fishing rights in the bill as amended by the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries. These rights were satisfactorily protected and the affected Indian tribes of Washington and Oregon had generally supported its provisions; however, the full Committee on Merchant Marine and Fisheries adopted a series of five amendments offered by Congressman McCloskey of California (the McCloskey Amendments) which seriously alarmed the Interior Committee. Among other things, these amendments, if enacted, would have the effect of destroying the federally-protected fishing rights of Indian tribes to anadromous fish in the State of California and the rest of the Nation, except Washington and Oregon. The additional views contained in the report of the Merchant Marine Committee (H. Rept. 96–1243, Part I) sets out the objections to the McCloskey Amendments. While the discussion of Indian law is somewhat simplistic, the Committee generally adopts those views, particularly as they relate to the impact on Indian fishing rights.

Background and Need

The Committee generally concurs in the Background and Need Section of the report of the Commitee on Merchant Marine and Fisheries (H. Rept. 96–1243, Part I). The Committee accepts the statement of that Committee with respect to the nature, condition, and need for management and enhancement of the anadromous fisheries of the Pacific Northwest, but the Committee does note that it has received several comments from Indian tribes and organizations disputing some of the Merchant Marine report data in that regard. In addition, that report's analysis of the treaty, statutory, and case law underlying and establishing the right of Indian tribes to fish on and off the reservation is, in some cases, faulty and, in others, understated.

Special Issues

I. Indian Fishing Rights in the Klamath River Basin

The fishing rights of the Indians in the Klamath River basin do not derive from treaties with the United States, but from the establishment of the reservation pursuant to Federal statute. While Federal case law exists upholding an Indian fishing right within the Hoopa

Valley reservation, the uncertainty about the scope of that right has resulted in uncertainty in the management of the resource in the basin. The Committee is advised that the Department of Justice is considering litigation which might have the effect of further clarifying that right. The Committee would urge the Department to move forward with such litigation.

II. INSTREAM WATER FLOWS

Section 104(d) of the bill as reported by the Committee on Merchant Marine and Fisheries provides that:

> Upon the taking effect of a management plan under section 103(b)(2), the Secretary and the Secretary of the Interior shall cooperate in implementing the plan in accordance with subsection 103(c)(1) and (2).

On page 51 of the report of the Merchant Marine Committee, this subsection is construed to mean, *inter alia*, that the Secretary of the Interior would be required to operate dams or other structures under his control in order to ensure instream flows required in a management plan. Implementation of the plan in that regard would give a priority to instream flows for fisheries purposes over other competing water uses.

That language is not included in the bill as amended and reported by the Interior Committee. Therefore, whatever the existing law is with respect to water uses and instream flows would not be altered by the bill. This would be reinforced by the language of section 303(1) which is the same in both the Merchant Marine and Interior Committee versions of the bill.

III. MANAGEMENT RESPONSIBILITIES

The Committee wishes to make clear its understanding that, once the committees adopt a management plan for their respective conservation areas which are approved and formalized, day-to-day management reverts to governing agencies which are party to the agreement, i.e., the tribes, the States, and the Pacific Management Council. The committees are not to engage in actual management and would have no emergency or other powers to enact regulations or otherwise manage the resources on a day-to-day basis. Management is to be accomplished by the tribes, States and the Pacific Council, all working pursuant to the agreed-upon plan and common set of objectives. Management prerogatives are retained by the governmental agencies or entities.

IV. MICHIGAN INDIAN FISHING RIGHTS

Although this bill does not contain provisions addressing fishing issues of the Michigan waters of the Great Lakes there have been attempts to amend this bill in such a fashion to affect the treaty fishing rights of the Indian tribes in northern Michigan.

The report submitted by the Committee on Merchant Marine and Fisheries to accompany this bill (H. Rept. 96–1243, Part I at 31–33) contains views on the Michigan fishery controversy between Indian and

non-Indian fishermen and the Michigan Department of Natural Resources.

This Committee feels that additional views should be presented on this issue. Several legal decisions over the last several years have indicated that four Indian tribes in northern Michigan have been reserved special fishing rights in the Great Lakes pursuant to several 19th Century treaties. Some of these decisions interpret the treaties to reserve to the Indian tribes a right to harvest fish within specified waters of the Great Lakes free of State regulation. The State of Michigan and a number of sportsmen's groups have argued that an unregulated Indian gill-net fishery will decimate the Great Lakes fishery resources.

The fishery resources of the Great Lakes are just beginning to recover from nearly complete depletion and decimation brought about by environmental degradation, introduction and migration of the sea lamprey through the Saint Lawrence Seaway and completely unregulated commercial fishing.The State of Michigan did not enact legislation restricting commercial fishing until 1968, approximately 136 years after statehood.

In May 1979 the United States District Court ruled in *United States* v. *Michigan*, 471 F Supp. 192 that certain of the Indian tribes in northern Michigan do have reserved treaty fishing rights in waters which they ceded to the U.S. by the Treaty of March 28, 1836. This basically affirmed an early Michigan State Supreme Court ruling in *People* v. *LeBanc*, 399 Mich. 31 (1976).

Throughout the 1970's the State of Michigan has been actively and extensively promoting a sports fishing industry. This sports fishery is viewed by the State and the sports groups as being jeopardized by the gill net fishery of the tribal fishermen. The State also contends that the Indian fishery is unregulated and will ultimately result in decimation of the fishery.

Early in 1979 the State of Michigan, the U.S. Department of the Interior and the treaty fishing tribes formed the "Interagency Ad Hoc Working Group." The primary purpose of this entity was to assess the stocks of Lake Trout, Lake Whitefish, Chubs and Lake Herring in treaty-ceded waters of the Upper Great Lakes and then develop management options by designating the projected "total allowable catches" (TACs) without causing damage for respective management grids on the lakes. Management option TAC's were subsequently developed which ranged from reestablishing self-sustaining fish stocks to a fishery almost entirely dependent on artificially stocked fish.

The catch figures for lake trout in 1979 indicated that catches by Indian treaty fishermen surpassed TAC's in six management grids while State licensed sports fishermen catches surpassed TAC's in ten management grids.

In May, 1979 the Indian tribes entered into a Memorandum of Understanding with the Department of the Interior in which the tribes agreed to develop joint comprehensive regulations governing the fishing by their members. These regulations were developed in consultation with the U.S. Fish and Wildlife Service and Michigan Department of Natural Resources. The regulations which were developed became effective April 23, 1980. (See 25 CFR Section 256.40 et. seq.)

The regulations provide two optional management plans. Management Option 1 establishes TACs which would allow for reduced catches and thus greater opportunity for reestablishing self-generating stocks. Management Option 2 provides for a basic put, grow and take fishery management plan which would insure continued dependence upon hatchery produced fish. Obviously for either management plan to work both the State and the tribes would have to agree to operate under the same plan.

The tribes agreed to operate under Management Option 1 contingent upon the State agreeing to the same TACs for respective management grids. The State of Michigan failed to provide any response at all to either management plan. As a result the tribes are now operating under Management Option 2.

Under the terms of the 1979 memorandum of understanding the Indian fishermen would report their catches each month for each grid to the Interagency Ad Hoc Working Group and Michigan DNR. In turn, the State would provide the catch figures for the State licensed commercial trap net fishermen and the estimate of the sports catch by all parties in the treaty ceded waters. The goal was for the combined catch not to exceed the TACs.

The results of this turn of events has thus far made it impossible to determine with any degree of certainty whether the TACs have been exceeded in 1980.

Under the Federal regulations, the Indian fishermen are required to report their catches each month, and the tribes and the Work Group are to reevaluate whether Indian fishing will continue in the respective grids if and when the total Indian catch for the respective grids meets or exceeds 50 percent of the TAC.

The State has withdrawn from the Work Group and has so far refused to reveal the State licensed sports and commercial catch making it impossible to determine whether the cumulative Indian and non-Indian catches have or will exceed the TACs for 1980. Over and above the State's refusal to provide catch figures, there are questions concerning the State's methodology for estimating the sports catch. The State sends out questionnaires to sports fishermen in the Spring of each year asking sports fishermen in the Spring of each year to report their catches for the previous year. The State contends that sportsmen tend to exaggerate their catches by tending to remember those times they caught fish rather than the times they didn't.

An additional problem with the methodology is that it is not based upon a "Real Time Process". Since the sports catch figures are not reported until the following year it is impossible to determine whether and to what extent these catches exceed the TACs and thus damage the fish stocks until after the damage has or may have occurred.

The State of Michigan contends that the use of gill nets by Indian fishermen endangers the survival of lake trout. They contend that prohibition of gill nets is necessary because gill nets compared to trap nets (used by State licensed commercial fishermen) are unselective and kill every large fish that swims into them.

Although the treaty rights of the Indians allow them to target and catch lake trout they have agreed and are now bound by the Federal regulations not to target on lake trout fishing. Since whitefish and lake trout often occupy the same general waters, incidental catches of

lake trout are inevitable regardless of whether gill or trap nets are used.

The regulations allow for Indian fishermen to retain up to 20 percent by weight of the total poundage of any net lift. If the weight percentage of lake trout is higher, then setting nets in that grid is prohibited for a ten day period.

The State contends that trap nets are more selective and would allow for non-targeted fish, i.e., lake trout, to be sorted out and returned to the water once the net is lifted. However, a recent Michigan DNR commissioned study by R.L. Echenroder reported that 31 percent of the lake trout caught in their trap net study were gilled by the time the net was raised. It also reported that trap nets tend to capture immature stocks of whitefish and were more effective in catching larger fish than were gill nets.

It is also known, depending on the length of time a trap net is left in the water and the density of the catch, that varying percentages of all types of fish are killed or critically damaged when a trap net is lifted due to crushing, abrasion or suffocation. Fish caught in deep trap nets often die due to rapid pressure changes as the net is lifted.

Over and above the question of relative selectivity of gill nets versus trap nets there are other serious factors which need to be considered if Indians were to be required to use trap nets in lieu of gill nets.

Trap net operations are much more costly to operate than gill net operations. Trap nets require the use of large boats or tugs and very expensive rigging. The costs of operating a trap net operation are much higher than gill net operations. In order to be economically feasible, a trap net operation would require significantly higher catches of fish than a gill net operation.

Although there are approximately 15 relatively large Indian gill net operations in some areas, most of the Indian fishermen have comparatively small operations or fish only part time or for subsistence.

Switching to trap nets would be unfeasible for many of these people. Without some cut back on the number of State licensed trap net operations it is questionable whether the fish stocks could sustain an increased catch which would be necessitated if Indian fishermen were to operate trap net operations on an economical basis.

In addition, there is only a limited area in the lakes in which trap net operations are viable. Most of these areas are already allocated to the State licensed commercial fishermen.

V. MANAGEMENT COMMITTEE MEMBERSHIP

The Committee would expect that the various management parties would appoint individuals to the committees who are knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest of the fishery resources of the geographical area concerned.

COMMITTEE AMENDMENT

The Committee adopted an amendment in the nature of a substitute to H.R. 6959, as reported by the Committee on Merchant Marine and Fisheries.

The basis for the Committee substitute was the bill as amended by the Subcommittee on Fisheries and Wildlife and Environment of the Merchant Marine Committee. That version is, in substance, the same as the bill reported by the Committee on Merchant Marine and Fisheries with the exception of the "McCloskey Amendments".

The Committee modified the Fisheries Subcommittee bill by including provisions for the establishment of a conservation or management committee for the Klamath River basin in California. Except for the differing membership of the Klamath River Committee, its function, purpose, and powers are the same as established for the Washington and Columbia River committees.

As outlined in the legislative background section of the report of the Merchant Marine and Fisheries Committee, the Klamath River has been the site of a lengthy controversy involving Indian fishing rights, and commercial and sports fishing interests; and the scene of dangerous confrontations between Indians and non-Indians on the River.

The membership, function, purpose and powers of the Klamath River Committee, as established in the Interior Committee substitute, have been carefully crafted after extensive ngotiations and a cooprative effort between Members of the Interior Committee and the Merchant Marine Committee.

The Klamath River Committee offers a unique opportunity for the parties involved to work together toward their mutual goal of improving and preserving the salmon and steelhead resource.

The parties invloved all recognize that it is in their interests to establish a conservation, management, enhancement and enforcement plan that will maximize and sustain the fishery resource yield potential of the Klamath River. The establishment of the Klamath River Committee will afford an opportunity to accomplish this objective once an acceptable management plan is negotiated and agreed to by the parties invloved. They can then avail themselves of the fishery enhancement funds authorized in the bill.

The Klamath River situation was the subject of a lengthy field hearing in Eureka, California on May 26, 1979 by the Merchant Marine Committee; and since that time the Committee has held a further oversight hearing on the salmon plan of the Pacific Fishery Management Council during which the Klamath situation was examined further.

Section-by-Section Analysis

Except as modified by the Committee amendments, including the deletion of the "McCloskey Amendments", the section-by-section analysis of H.R. 6959, as reported, does not differ significantly from that contained in the report of the Committee on Merchant Marine and Fisheries.

Cost and Budget Act Compliance

As reported by the Committee, the bill authorizes $85,000,000 over the next ten fiscal years for the purpose of carrying out fisheries enhancement activities in the three conservation areas. In addition, $14,000,000 is authorized for the next ten years for thepurpose of carrying out steelhead enhancement in the Washington and Columbia River conservation areas. Lastly, the bill authorizes the appropriation of

$37,500,000 over the next five fiscal years to carry out the commercial fishing fleet adjustment program under title II.

The cost analysis prepared by the Congressional Budget Office follows:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

SEPTEMBER 19, 1980.

1. Bill number: H.R. 6959.

2. Bill title: A bill to provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes.

3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs, September 10, 1980.

4. Bill purpose: The bill authorizes planning and grant programs to protect, manage and develop salmon and steelhead resources. Title I establishes procedures and criteria for the preparation of management and enhancement plans by designated committees. In addition, financial assistance in the from of grants is authorized for certain states, Indian tribes or the Pacific Fisheries Management Council to implement enhancement projects specified in an approved enhancement plan.

Title II establishes a fishing fleet adjustment program for the State of Washington. The bill directs the Secretary of Commerce to provide up to 75 percent of the total costs of the programs, which is designed to reduce the non-Indian salmon fishing fleet through state purchase of vessels, gear, and licenses at market value.

For the 10-year period beginning October 1, 1981, the bill authorizes the appropriation of not more than $52 million for enhancement projects in the Washington conservation area, $32 million for projects in the Columbia River conservation area and $15 million for the Klamath River conservation area. In addition, the bill provides $37.5 million for the 5-year period beginning October 1, 1981 for the fleet adjustment program.

5. Cost estimate:

	Millions
Authorization level:	
Fiscal year:	
1981	----
1982	$136
1983	----
1984	----
1985	----
Estimated outlays:	
Fiscal year:	
1981	----
1982	22
1983	29
1984	22
1985	27

In addition to the amounts shown in the above table an estimated $36 million in outlays are projected to occur after fiscal year 1985. Also, technical assistance provided by the Department of Commerce for plan development is estimated to cost approximately $1 million in fiscal year 1981, though no sums are authorized for this purpose.

The costs of this bill fall within budget function 300.

6. Basis of estimate: For the purpose of this estimate, it is assumed that the full amount authorized to be appropriated beginning in fiscal year 1982 will be appropriated by the start of that year.

Title I authorizes the appropriation of a total of $99 million over the 10-year period beginning October 1, 1981, for enhancement projects in the Washington, Columbia River, and Klamath River conservation areas. This estimate assumes that the projects will require an average of two years to be completed and that grants will be used to cover both capital and operating costs of the funded projects. Based on the average operating costs for a typical hatchery, it is assumed that annual operating costs of the new projects will be 4 to 5 percent of the construction cost. In addition, the outlay estimate assumes that the required enhancement plan will be submitted to the Secretary of Commerce in December 1981, that the review process will be completed in April, 1982 and that the first applications for funding will be processed no earlier than July, 1982. Therefore, only about $2 million is expected to be spent in fiscal year 1982. The estimated outlay pattern is based on the assumption that the majority of projects will be undertaken in the third and fourth years after funds become available. Outlays for enhancement projects are expected to be $12 million in 1983, $22 million in 1984 and $27 million in 1985. The remaining funds will be spent at a declining rate over the next four years. Further, assuming that the three conservation area committees develop management and enhancement plans, it is estimated that approximately $1 million will be needed for the Department of Commerce to provide the technical assistance as authorized in the bill.

Title II authorizes the appropriation of $37.5 million, available over a 5-year period from October 1, 1981, for a fleet adjustment program in Washington State. The amendment directs the State to establish a revolving fund for the purchase of vessels, gear and licenses and for the deposit of receipts accruing from the resale of these items. For the purpose of this estimate, it is assumed that the authorized amount will be appropriated in full by the start of fiscal year 1982 and will be used exclusively for the purchase of fishing vessels, gear, and licenses. Because of a backlog in requests to the State to purchase private vessels and licenses, outlays are estimated to be $20 million in fiscal year 1982 and $17.5 million in fiscal year 1983. The estimate assumes that the program will continue through 1986 by using funds generated through the resale of vessels. The bill directs that 75 percent of funds remaining at the termination of the program be returned to the U.S. Treasury. This transfer is not expected to occur until 1987, nor is it expected to result in significant receipts to the Treasury.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 3, 1980, CBO prepared a cost estimate for S. 2163, as ordered reported by the Senate Committee on Commerce, Science and Transportation, April 1, 1980. The Senate bill authorized a total of $162 million, including $102 million for enhancement projects, $50 million for the fleet adjustment program, and $10 million for planning grants and fisheries part development in Oregon. On August 6, 1980, CBO prepared a cost estimate for H.R. 6959, as ordered reported by the House Committee on Merchant

Marine and Fisheries, July 24, 1980. That bill is very similar to the House Interior Committee version, except that the authorization level, $121 million, did not include $15 million for the Klamath River conservation area. The estimated outlays reflect these differences.

9. Estimate prepared by: Linda Alperin.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

The Committee estimates that the enactment of H.R. 6959, as reported, would have no significant inflationary impact on the prices and costs in the national economy.

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the Committee and no recommendations were submitted to the Committee pursuant to rule X, clause 2(b)2.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, recommends approval of the bill, as amended.

EXECUTIVE COMMUNICATION

A letter from the Secretary of the Interior, dated September 9, 1980, to the Chairman of the Committee concerning H.R. 6959, as reported by the Committee on Merchant Marine and Fisheries follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 8, 1980.

HON. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On July 24, 1980, the House Committee on Merchant Marine and Fisheries reported H.R. 6959, with amendments, a bill "To provide for the conservation and enhancement of the salmon and steelhead resources of Washington State, assistance to the treaty and nontreaty harvesters of these resources, and for other purposes." We understand that you are now marking up H.R. 6959 and we would like to express the Administration's strenuous opposition to the amendments to H.R. 6959 sponsored by Congressman McCloskey and adopted by the full Committee.

Proposed salmon-steelhead enhancement legislation has been the subject of much activity during this session of Congress. On December 14, 1979 the Administration transmitted a proposal to Congress in response to economic dislocations arising from the adjustments in harvest opportunity occasioned by the decision in *United States* v. *Washington*, 384 F. Supp. (W.D. Wash. 1974), *aff'd*, 520 F. 2d 676 (9th Cir.

1975), *cert denied* 423 U.S. 1086 (1976), *substantially affirmed Washington* v. *Washington Passenger Fishing Vessel Ass'n*, 433 U.S. 658 (1979). The Administration's proposal was limited in scope to the Washington fisheries within the *Boldt* case area; and it consisted of a salmon and steelhead enhancement program, a fishing fleet adjustment program, and a tribal fishery development program.

The Administration bill was referred jointly to the Senate Committee on Commerce, Science and Transportation and to the Committee on the Environment and Public Works. The bill was substantially amended by the Committees and as so amended passed the Senate as S. 2163. The bill as enacted by the Senate was still limited to the fisheries of Washington and Oregon; it did however include a new section providing for a Columbia River enhancement program. The Senate bill did not provide for management programs but, like the Administration bill, was limited to enhancement programs.

The Administration vigorously opposed S. 2163 in the form in which it had passed the Senate as well as the companion bill H.R. 6959 discussed below. We believe that any legislation should be limited in scope to the *Boldt* case area; that the State of Washington should share in the costs of the enhancement and vessel buy-back programs; and that Indian treaty rights must be protected.

H.R. 6959 was the companion bill to S. 2163 as it had passed the Senate, and it was referred to the House Committee on Merchant Marine and Fisheries. The Subcommittee on Fisheries, Wildlife Conservation, and the Environment held hearings on H.R. 6959 and completed its mark-up of the bill on July 22, 1980. As it emerged from the Subcommittee, H.R. 6959 differed significantly from the Administration proposal and from the bill as it had passed the Senate and been introduced in the House. Most importantly the bill included management as well as enhancement provisions, it omitted controversial provisions which would have limited the Indians' right to fish for steelhead, and it included provisions allowing tribes to opt out if they so chose of any management or enhancement plan. We oppose these opt out provisions. We believe that they are administratively unworkable and that they will defeat the underlying purpose of the bill to address and improve the status of the entire *Boldt* area fishery. For the same reasons, we also oppose the making of enhancement grants directly to each individual tribe; we believe that all tribal grants should be made to and administered by the tribal coordinating body provided for in the act.

Thus, before the bill was reported by the full House Committee on Merchant Marine and Fisheries on July 24, its geographic scope had always been limited, in both the House and the Senate to the fisheries of Washington and Oregon. As reported by the Committee, however, the bill is broadened to extend to anadromous fisheries throughout the United States. The bill deals extensively with the anadromous fisheries of the State of California. It includes explicit references to fisheries in the Great Lakes and in New England and it provides a means by which any state with an Indian fishery and with an anadromous fish resource can assume virtually complete control of both.

The Administration strongly opposes H.R. 6959 in the form in which it has passed the full Committee. In particular, we are opposed to those amendments to the bill which extend its scope beyond the

fisheries of Washington and Oregon. We believe these amendments constitute a hasty attempt to apply legislation which has been specifically addressed to the Washington and Oregon situation to fisheries which are not comparable. Furthermore, we believe that the amendments are unfair to California tribes and to other state tribes in that they do not adequately protect Indian fishing rights. Finally, we believe the amendments create a highly confusing and unworkable jurisdictional situation among the states, the tribes, and the federal government.

The Administration's original bill, the bill enacted by the Senate, and the bill adopted by the House Subcommittee on Fisheries and Wildlife each constituted an attempt to resolve some of the problems which have resulted from the *Boldt* and *Belloni* decisions. As a result of these and related decisions, the identity of the tribes entitled to exercise fishing rights has been established, the legal bases of these rights have been determined, and the extent of these rights has been quantified.

The judicial determinations which have specified the rights of tribes to fish in Washington and Oregon, however, have not yet occurred in California or elsewhere. For example, the extent of the treaty right of certain Michigan tribes to fish in the Michigan waters of the Great Lakes is currently in extensive litigation in the federal courts. Moreover, the problems and issues involved in Indian fisheries in California, Michigan, and elsewhere are quite different from those of the Northwest. We believe that Indian fishing rights issues are complex in character and vary widely from area to area as far as the nature, scope, and exercise of the right is concerned. Thus legislation should be fashioned, after due consideration, on an area-by-area basis and only after the nature and scope of the Indian fishing right has been determined. We oppose the Committee amendments because they are premature and because they are based on legislation specifically tailored to the Northwest.

We are also gravely concerned with the bill because the amendments adopted by the full Committee are most unfair as applied to Indian fishing rights outside the Northwest. The bill gives state governments virtually total control over Indian fishing both on and off the reservation to the almost complete derogation of any tribal or federal interest in the regulation of the fish resource. To the best of our knowledge, this broad-ranging transfer of jurisdiction to state governments is unprecedented. Even Public Law 83–280 of August 15, 1953, as amended 18 U.S.C. § 1162, which gave certain states including California a broad degree of jurisdiction over Indian country within the state specifically reserved the right of Indian tribes to be free of state regulation of hunting, trapping, or fishing. *See e.g. Menominee Tribe v. United States*, 391 U.S. 404, 410–411 (1968).

Section 101(b) of the bill provides for the creation of a five-member "California Committee," three members of which are to be appointed by the governor, one member by the Pacific Council, and one member by the tribes. This section also allows other states to form committees consisting of between three and five members including one Indian member. With the exception of the Washington Committee and the Columbia River Committee whose actions require unanimous consent, all actions of the state committees, including the preparation or

amendment of management or enhancement plans, are to be accomplished by majority vote. Thus Indians are given no significant voice in management activities. Indeed, under the bill the California Committee is established immediately upon the Governor's notification of the Secretary that the three governor's appointees have been selected; designation of the Indian representative is not required for the organization of the Committee.

Section 102 of the Act allows the state management committee to prohibit Indian commercial fishing and to regulate the types of gear, vessels, and equipment used in Indian fishing. Such regulation is to be accomplished by majority vote in which, as indicated above, Indians do not have a real voice. Although the bill provides that state regulation may not violate any treaty right or legal right established by Congress, the bill provides no standards to specify the nature of these rights and it fails to provide any protection for rights created by Executive Order. Instead Section 102 (a) and (c) of the bill confers upon a majority of the state committee the authority to determine the scope of Indian fishing rights leaving the tribes with litigation as their sole recourse to protect their rights.

Section 2(19) of the bill defines "state tribe" as one whose fishing rights derive from a treaty with the United States. This definition fails to recognize the fishing rights of tribes on executive order reservations even though many of the California reservations, for example, were established by executive order. The courts have recognized that Indians of executive order reservations have fishing rights. *See e.g. Cheyenne-Arapaho Tribes* v. *Oklahoma*, 618 F.2d 665 (10th Cir. 1980); *Pacific Coast Federation of Fishermen's Association* v. *Secretary of Commerce*, (N.D. Ca., decided, June 4, 1980).

The final major deficiency we see in the amendments adopted by the full Committee is that they create a confusing and unworkable regulatory scheme with respect to the management of both ocean and inland fisheries. The incoherent jurisdictional scheme resulting from the amendments will operate to the grave detriment of all user groups, Indian, commercial, and sport fishermen, and to the detriment of the resource.

The Fishery Conservation and Management Act of April 13, 1976, 90 Stat. 346, 16 U.S.C. § 1801 established, among other things the Pacific Council (PFMC) with the responsibility of managing the ocean fishery seaward of the States of California, Oregon, Washington, and Idaho under the supervision of the Secretary of Commerce, 16 U.S.C. § 1852.

The full Committee amendments to H.R. 6959, Section 2(10), (17) define the "State conservation area" to include all areas within the fishery conservation zone established by the FCMA through which fish stocks originating within the state migrate. Section 101(c) of the bill authorizes the California Committee, the Columbia River Committee, the Washington Committee, and any other State Committee to prepare, review, and amend a management and enhancement plan for the state conservation area. Section 105 of the bill directs the Pacific Council to conform its management plan prepared under the FCMA to make it consistent with management plans prepared and in effect under the bill.

Anadromous fish originating in the rivers of California, Oregon, or Washington migrate throughout the oceans seaward of these states to and in most cases beyond the oceans seaward of Alaska. The bill gives each State Committee management and enhancement jurisdiction of a scope that can only be termed astonishing covering as it does ocean fisheries seaward of other states up to 200 miles from shore. Even more importantly, the bill gives each of these state committees independent, overlapping, and mutually contradictory jurisdiction over the identical ocean waters, and it directs the Pacific Council to conform its management plan to those of the states. The problem is particularly severe as it applies to the California Committee because it allows for action by a majority vote while unanimous action is required for the Columbia River and Washington Committees.

In effect, the bill repeals the FCMA as it applies to the oceans seaward of California, Oregon, and Washington and abolishes any meaningful managerial function of the PFMC. The bill destroys any possibility of unified management of the ocean fishery, creating instead a welter of overbroad, duplicative, potentially contradictory, and uncoordinated managerial authorities in the respective state committees. The bill, we believe, is unsound, unwise, and entirely impractical.

The Department of Justice has advised that "the amendments concerning management authority in California and states other than Washington and Oregon are likely to promote extensive litigation since they provide for state regulation of Indian fishing without any effective participation by the Tribes and hence may be an unjust taking of the property right to fish without compensation. *See U.S.* v. *Shoshone Tribe*, 304 U.S. 111 (1938); *Menominee Tribe* v. *U.S.*, 391 U.S. 404 (1968). Similarly, the awkward management structure in the bill makes the current difficult situation worse by further fragmenting control of fisheries thereby fostering a situation which is ripe for further extensive litigation."

In light of the many aforementioned concerns, the Administration strongly recommends that the amendments adopted by the full Committee be deleted from the bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program and that enactment of the H.R. 6959, as reported out by the House Committee on Merchant Marine and Fisheries, is not in accord with the program of the President.

Sincerely,

CECIL D. ANDRUS,
Secretary.

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